

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

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IN THE MATTER OF THE TRANSFER )  
OF TERRITORY FROM ROY K-12 )  
SCHOOL DISTRICT #74 (High School )  
Portion) TO GRASS RANGE HIGH )  
SCHOOL DISTRICT #27, )

OSPI 269-97

Jess Knerr, Jill Knerr, Jerry Knerr, )  
Kristi Knerr, Harold Knerr, Beverly )  
Knerr, Gene Horyna, Sherry Horyna )  
Rex Murnion, and Lori Murnion, )  
Petitioners/Appellants. )

**DECISION AND ORDER**

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**PROCEDURAL HISTORY**

This is an appeal by the Jess Knerr, Jill Knerr, Jerry Knerr, Kristi Knerr, Harold Knerr, Beverly Knerr, Gene Horyna, Sherry Horyna, Rex Murnion, and Lori Murnion (hereinafter the “Petitioners”) of the Fergus County Superintendent of Schools' denial of their petition to transfer territory from the Roy K-12 School District No. 74 (hereinafter “the Roy District”) to Grass Range High School District No. 27 (hereinafter “the Grass Range District”). The Roy District is a kindergarten through twelfth grade district established under Title 20, Chapter 6, Part 7. Grass Range is a high school district that encompasses two elementary districts - Grass Range Elementary and Ayers Elementary.

On November 12, 1996, the Fergus County Superintendent of Schools received a petition to transfer territory from the Roy K-12 District to the Grass Range High School District. The territory to be transferred makes up approximately 8% of the District’s taxable value (Findings Decision and Order.269

of Fact, Conclusions of Law and Order, p. 4). The petition was signed by a majority of the electors in the territory (Transcript, p. 6). The Grass Range Trustees approved the request. The Fergus County Commissioners certified that the petition met the requirements of § 20-6-320(1), MCA (Findings of Fact, Conclusions of Law and Order, p. 1).

This appeal was filed prior to the amendments to §§ 20-6-213 and 20-6-320, MCA, that placed the jurisdiction to hear appeals of territory transfer decisions in District Court. At the time of this decision elementary territory transfers were appealed to the County Commissioners and high school territory transfers were appealed to the State Superintendent. The Roy District, a K-12 district, filed a motion requesting that the County Superintendent clarify what procedure applied to a K-12 territory transfer. The Roy District pointed out that the procedure followed did not address the elementary district issue. The Petitioners submitted an amended petition revising the transfer of territory to include the Grass Range Elementary School District No. 27, as well as the Grass Range High School District No. 27. On December 19, 1996, the County Superintendent issued an order that the amended petition rendered the motion for clarification moot.

On January 27, 1997, a hearing was held. Eight of the nine petitioners and two residents of the Grass Range High School District testified in favor of the petition and nine individuals from the Roy K-12 School District testified in opposition of the petition (Findings of Fact, Conclusions of Law and Order, p. 2). The Roy District and the Petitioners were represented by counsel. The County superintendent denied the transfer. The Petitioners filed this appeal. Both parties briefed the issues. Having reviewed the record, the County Superintendent's Findings of Fact, Conclusions of Law and Order and the arguments on appeal, the State Superintendent of Public Instruction now enters the following.

## **DECISION AND ORDER**

The State Superintendent had jurisdiction over this matter at the time this appeal was perfected. Section 20-6-320, MCA (1995). There is substantial, credible evidence on the record to support the County Superintendent's findings of fact. The conclusions of law are correct. The order is AFFIRMED.

## **STANDARD OF REVIEW**

The State Superintendent's review of a county superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in § 2-4-704, MCA, and adopted by this Superintendent in ARM 10.6.125. The Montana Supreme Court has interpreted § 2-4-704 to mean that findings of fact are reviewed under a clearly erroneous standard and conclusions of law are reviewed under an abuse of discretion standard. Harris v. Trustees, Cascade County School Districts No. 6 and F, and Nancy Keenan, 241 Mont. 274, 786 P.2d 1164 (1990). The petitioner bears the burden of showing that he has been prejudiced by a clearly erroneous ruling. Terry v. Board of Regents, 220 Mont. 214, at 217, 714 P.2d 151, at 153 (1986).

The State Superintendent may not substitute her judgment for that of a county superintendent as to the weight of the evidence on questions of fact. Findings are upheld if supported by substantial, credible evidence in the record. A finding is clearly erroneous only if a "review of the record leaves the Court with the definite and firm conviction that a mistake has been committed." Wage Appeal v. Board of Personnel Appeals, 208 Mont. 33, at 40, 676 P.2d 194, at 198 (1984).

Conclusions of law are subject to more stringent review. The Montana Supreme Court has held that conclusions of law are reviewed to determine if the agency's interpretation of the law is correct. Steer, Inc. v. Dept. of Revenue, 245 Mont. 470, at 474, 803 P.2d at 603 (1990).

### **MEMORANDUM OPINION**

Motion for Clarification. The County Superintendent proceeded on the petition to transfer territory from a K-12 district as if it were a petition to transfer elementary and high school territory. The petitioners initiated the petition as a high school transfer so that was the procedure the County Superintendent followed. If the petition had been granted, the territory from the K-12 district would have transferred to a high school district and to an elementary district. The K-12 district would have remained intact. The Legislature has not provided any statutory guidelines for procedure to follow in such a case. Although the transfer was not granted, the procedure followed appears to be acceptable within the guidelines of Alberton School District No. 2, vs. Superintendents of Missoula, Ravalli and Mineral County Schools, 57 St.Rep. 1101, 2000 MT 264 (9/29/00). The Court wrote that:

It would be unreasonable, and far too formalistic to require that two separate petitions must be submitted to the school superintendent, where one petition, clearly identifying the intent to transfer both high school and elementary territory, serves the same function.

Issues raised on appeal. Four children resided in the area proposed for transfer at the time the petition was filed. One attended high school and three attended elementary school in Grass Range. Petitioners initiated the territory transfer after the County Transportation Committee denied approval of a bus route that had picked up students living in the Roy District and transported them to Grass Range.

On appeal the Petitioner's argued that:

- 1) The evidence did not establish an adverse impact on Roy K-12 resulting from the transfer;
- 2) The County Superintendent gave too much weight to the adverse impact on the taxpayers in the Roy K-12 District,
- 3) The attorney for the petitioners had the right to cross examine individuals who spoke at the hearing and the County Superintendent's failure to allow him to do so resulted in reversible error.

Issues one and two. Issues one and two are questions related to sufficiency of evidence and will be addressed as one issue. Petitioners argue that the evidence does not support denying the transfer and that the County Superintendent gave too much weight to the burden on the Roy taxpayers. The record does not support these arguments.

Section 20-6-320(6), MCA (1995), stated the standard a county superintendent must use to decide whether to grant or deny a request to transfer territory:

The decision must be based on the effects that the transfer would have on those residing in the territory proposed for transfer as well as those residing in the remaining territory of the high school district.

Conclusion of law six and seven establish that the County Superintendent correctly understood what standard of law to apply. Her findings of fact show that she weighed the evidence presented and reached a conclusion based on that evidence.

The record shows that Grass Range residents, the Grass Range School District, Roy residents and the Roy K-12 District all had the opportunity to offer evidence in support of their various positions. Evidence was offered on bus safety, taxable valuation, tax burden, educational needs of the students, voting, and community of interest. The County Superintendent, as the trier of fact, heard and weighed the evidence. She concluded that the benefits of the transfer were outweighed by the burdens. She gave weight, but not undue weight, to the tax impact.

The petitioners are correct that the tax effect on the residents of the District is not the sole consideration to be weighed by a county superintendent. The effect on taxpayers is one consideration but a county superintendent must consider evidence offered on all the effects of the transfer and decide which side's benefits and burdens outweigh the other's.

The record and the County Superintendent's order establish that other factors were considered. Conclusion of Law 8, for example, states:

8. This proceeding involves Petitioners seeking to transfer territory in which 4 school-age children reside. The asserted benefits to the Petitioners of having the transfer take place are straightforward:

- (A) an opportunity to vote in and pay their taxes to the school district in which they have chosen to send their children; and
- (B) an opportunity to enhance the safety of the location at which their children are picked up for transportation to school;

The County Superintendent weighed the benefits and burdens of the transfer. The evidence and testimony from the Roy residents and the Roy K-12 District persuaded the County Superintendent. The State Superintendent may not substitute her judgment on a question of a fact for that of the county superintendent who heard the evidence.

Issue three. Petitioners argue on appeal that the County Superintendent's Order should be set aside because their attorney did not have the opportunity to cross-examine individuals speaking at the hearing. The inability of a group of citizens to cross-examine individuals stating their positions at a public hearing is not a denial of due process that would result in reversal of a County Superintendent's decision.

The procedures required by § 20-6-320, MCA, do not follow exclusively the contested case procedures of MAPA. The procedures also provide for input from the general public because the boundaries of a school district raise issues of general interest - the right to vote in a district, tax issues, statutory rights to attend a particular district, etc. Section 20-6-320(3), for Decision and Order.269

example, requires public notice of a public hearing in which any interested person can appear and be heard on their position. Unlike a contested case hearing where a witness testifies in response to direct and cross examination, at a public hearing an individual addresses the decision maker regarding matters that the individual considers relevant. If a proceeding does not require direct examination because it is a public hearing, it is not reversible error to deny cross-examination.

### **CONCLUSION**

The County Superintendent's Findings of Fact are supported by substantial credible evidence. Her Conclusions of Law and procedural ruling are correct as a matter of law. The Order is AFFIRMED.

DATED this 20th day of December, 2000.

/s/ Nancy Keenan  
NANCY KEENAN

## **CERTIFICATE OF SERVICE**

THIS IS TO CERTIFY that on this 20<sup>th</sup> day of December, 2000, a true and exact copy of the foregoing DECISION AND ORDER was mailed, postage prepaid, to the following:

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